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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3336 OF 2006

Sameer Mubarak @ Abdul Maniyar .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.R.S.Kate for applicant

Mr.R.Y.Mirza, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 12th September 2006.

P.C.

. Heard Mr.Kate for applicant and Mr.Mirza, A.P.P. for State.

2. Applicant is an accused in C.R.No.226 of 2006 registered with Bund Garden Police Station alleging offences of cheating and forgery.

3. Applicant had applied for being enlarged on bail before the J.M.F.C. on 15th July 2006 but his application was rejected on 17th July 2006. Thereafter, he applied to the Sessions Court and the learned Sessions Judge on 31st August 2006 observed that the investigations are in progress and, therefore, it would not be fair to release the applicant on bail. Learned Judge observed that applicant may interfere with the investigation.

4. Mr.Kate, learned Counsel for applicant submits that the same learned Magistrate has enlarged the co-accused on bail and more particularly Mr.Nissar Pathan. He submits that Nissar Pathan and others are directly concerned with this transaction inasmuch as prosecution case is that the said Nissar Pathan is proprietor

of the firm which is engaged in the business of construction and has constructed a building. It the accused No.1 Nissar who had sold the subject flat to the complainant for a consideration of Rs.7,49,550/-. Thereafter, the accused persons prepared false documents and sold the subject flat subsequently to another gentleman. The second purchaser Mr.Rao is also an accused and it is alleged that he has obtained loan from a bank by mortgaging the subject flat on the basis of false and forged documents.

5. Learned A.P.P. submits that as far as applicant is concerned, he has been denied bail when the investigations were in progress and at a later stage because it appears that he has cheated several persons by entering into identical transactions on the strength of false documents. On this ground the learned A.P.P. submits that the application be dismissed.

6. I have perused the application and the

annexures thereto. As far as orders dated 10th August 2006 and 23rd August 2006 which are passed in the case of co-accused so also more particularly in the case of Nissar Pathan would demonstrate that they are identically situated as that of present applicant. If applications of these co-accused could be considered favourably and they can be enlarged on bail, I see no reason why the applicant should be denied similar treatment. More so, when it is his case that he is not concerned with the builder firm which executed agreement for sale. It is also brought to my notice that the accused No.2 has paid a sum of Rs.9.50 lakhs to the bank as well.

7. In such circumstances, the applicant deserve to be released on bail. Hence, following order:-

i) The applicant arrested in connection with C.R.No.226 of 2006 registered with Bund Garden Police

Station shall be enlarged on bail in the sum of Rs.25,000/- with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicant will remain present before the concerned investigating officer once in a fortnight till the conclusion of trial.

iii) The order of bail will be given effect only after the applicant furnishes to the investigating officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to

condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicant shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) Parties to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)